

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 440 of 1997

in

CIVIL APPLICATION No 3590 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DIVISIONAL ENGINEER

Versus

PRAFULCHANDRA SHANTILAL PANDYA

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Appearance:

MR NS SHEVADE for Petitioner  
MR DN PANDYA for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 08/05/97

ORAL JUDGEMENT

Mr. Shevade, learned counsel for the appellant

seeks leave to delete respondent No.2, Estate Officer & Additional Divisional Railway Manager, Western Railway, Ratlam, as party. Leave granted.

Admitted. Mr. G.S. Vyas appears and waives service of notice of admission on behalf of respondent No.1, Prafulchandra Shantilal Pandya (now sole respondent). We have heard the parties.

This appeal is directed against the interim order passed by the learned single Judge. The said order reads as under :-

"Heard.

In the facts and circumstances of the case, the standing crop in the land in question is allowed to be cut and harvested by the petitioner or his agents, servants. The petitioner is allowed to take and store such harvested crop now standing in the field. This will be subject to the final result of the petition. The Civil Application accordingly stands disposed of.

At this stage Mr. Shevade requests to stay the operation of this order. In the facts and circumstance of the case, the request is rejected."

It is not in dispute that the main matter, i.e. Special Civil Application No.8422 of 1996 is pending before the learned single Judge and is admitted by issuing Rule. The proceedings have been initiated against the present respondent under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. An order was passed by the Competent Authority, which was confirmed in appeal. There is some dispute with regard to the fixation of mesne profits and/or damages and/or compensation. It was stated at the Bar, for fixation of amount, the matter was remanded by the Appellate Court and again the said amount will be fixed by the Competent Authority. So far as eviction is concerned, the petition is pending and Rule is issued.

It appears that, according to the case of the respondent, crop was standing on the land in question and the learned single Judge has passed the order extracted hereinabove and allowed it to be cut and harvested by the petitioner (respondent) or his agents, servants and he

was also allowed to store such harvested crop now standing in the field. Mr. Shevade, learned counsel for the appellant submitted that the learned single Judge ought not to have passed the order. According to him, the amount of more than seven crores of rupees is due and payable by the respondent, which is seriously disputed by Mr. Vyas. If the amount realised from the disposal of the crop would be permitted to be taken away by the original petitioner, irreparable loss would be caused to the Railway Administration. Without expressing any opinion on merits, one way or the other, we are of the view that, it would be in the interest of justice and also in the interest of both the parties, if the Divisional Railway Manager, Western Railway or an officer authorised by him disposes of the crop in presence of the respondent or any person nominated by him and the amount realised will be invested by the Divisional Railway Manager in a separate account in any nationalised bank initially for a period of two years so as to see the final outcome of the petition. If during the period of two years, the petition is not disposed of, the said amount will be continued to be invested for six months and, thereafter also, in the same manner till the final order is passed in the main matter. The learned single Judge, at the time of final disposal of the main matter will pass an appropriate order even with regard to disbursement of the said amount. The above order is passed and observations are made only for the purpose of disposal of the present appeal and we may not be understood to have stated anything on merits and the learned single Judge will decide the matter strictly in accordance with law on its own merits. Appeal is accordingly disposed of. No costs.

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